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**DEPARTMENT OF THE TREASURY**

**31 CFR Part 103**

**RIN 1506-AA21**

**Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations -- Requirement that Brokers or Dealers in Securities Report Suspicious Transactions**

**AGENCY:** Financial Crimes Enforcement Network (“FinCEN”), Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document contains amendments to the regulations implementing the statute generally referred to as the Bank Secrecy Act (“BSA”). The amendments require brokers or dealers in securities (“broker-dealers”) to report suspicious transactions to the Department of the Treasury. The amendments constitute a further step in the creation of a comprehensive system for the reporting of suspicious transactions by the major categories of financial institutions operating in the United States, as a part of the counter-money laundering program of the Department of the Treasury.

**DATES:** Effective Date: [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

Applicability Date: [INSERT DATE 180 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. See 31 CFR 103.19(h) of the final rule contained in this document.

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**SUPPLEMENTARY INFORMATION:**

I. Statutory Provisions.

The BSA, Public Law 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5332, authorizes the Secretary of the Treasury, inter alia, to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.<sup>1</sup> Regulations implementing Title II of the BSA (codified at 31 U.S.C. 5311 et seq.) appear at 31 CFR Part 103. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

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<sup>1</sup> Language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (the “USA Patriot Act”), Public Law 107-56.

The Secretary of the Treasury was granted authority in 1992, with the enactment of 31 U.S.C. 5318(g),<sup>2</sup> to require financial institutions to report suspicious transactions.

As amended by the USA Patriot Act, subsection (g)(1) states generally:

The Secretary may require any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation.

Subsection (g)(2)(A) provides further that

If a financial institution or any director, officer, employee, or agent of any financial institution, voluntarily or pursuant to this section or any other authority, reports a suspicious transaction to a government agency –

(i) the financial institution, director, officer, employee, or agent may not notify any person involved in the transaction that the transaction has been reported; and

(ii) no officer or employee of the Federal Government or of any State, local, tribal, or territorial government within the United States, who has any knowledge that such report was made may disclose to any person involved in the transaction that the transaction has been reported, other than as necessary to fulfill the official duties of such officer or employee.

Subsection (g)(3)(A) provides that neither a financial institution, nor any director, officer, employee, or agent of any financial institution

that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this subsection or any other authority . . . shall . . . be liable to any person

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<sup>2</sup> 31 U.S.C. 5318(g) was added to the BSA by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act (the “Annunzio-Wylie Anti-Money Laundering Act”), Title XV of the Housing and Community Development Act of 1992, Public Law 102-550; it was expanded by section 403 of the Money Laundering Suppression Act of 1994 (the “Money Laundering Suppression Act”), Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103-325, to require designation of a single government recipient for reports of suspicious transactions.

under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure.

Finally, subsection (g)(4) requires the Secretary of the Treasury, “to the extent practicable and appropriate,” to designate “a single officer or agency of the United States to whom such reports shall be made.”<sup>3</sup> The designated agency is in turn responsible for referring any report of a suspicious transaction to “any appropriate law enforcement, supervisory agency, or United States intelligence agency for use in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.” Id., at subsection (g)(4)(B).

Section 356 of the USA Patriot Act required Treasury, after consultation with the Securities and Exchange Commission and the Board of Governors of the Federal Reserve System, to publish proposed regulations before January 1, 2002, requiring broker-dealers to report suspicious transactions under 31 U.S.C. 5318(g). In accordance with this requirement, Treasury published a Notice of Proposed Rulemaking relating to suspicious transaction reporting by broker-dealers on December 31, 2001. Section 356 requires final regulations to be issued by July 2, 2002.

## II. Broker-dealer Regulation and Money Laundering.

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<sup>3</sup> This designation does not preclude the authority of supervisory agencies to require financial institutions to submit other reports to the same agency or another agency “pursuant to any other applicable provision of law.” 31 U.S.C. 5318(g)(4)(C).

The regulation of the securities industry in general and of broker-dealers in particular relies on both the Securities and Exchange Commission (the “SEC”) and the registered securities associations and national securities exchanges (so-called self-regulatory organizations or “SROs”). Broker-dealers have long reported securities law violations through existing relationships with law enforcement, the SEC, and the SROs. The SEC and the SROs have taken measures to address money laundering concerns at broker-dealers.<sup>4</sup> The SEC adopted rule 17a-8 in 1981 under the Securities and Exchange Act of 1934 (“Exchange Act”), which enables the SROs, subject to SEC oversight, to examine for BSA compliance. Accordingly, both the SEC and SROs will address broker-dealer compliance with this rule.

Certain broker-dealers have been subject to suspicious transaction reporting since 1996. In particular, broker-dealers that are affiliates or subsidiaries of banks or bank holding companies have been required to report suspicious transactions by virtue of the application to them of rules issued by the federal bank supervisory agencies. In April

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<sup>4</sup> For example, in April 2001, the Director of the Office of Compliance Inspections and Examinations at the SEC announced that the Commission would undertake compliance sweeps of broker-dealers in the fall of 2001. See Money Laundering: It’s on the SEC’s Radar Screen, Remarks at the Conference on Anti-Money Laundering Compliance for Broker-Dealers Securities Industry Association (May 8, 2001) (transcript available at [www.sec.gov/news/speech/spch486.htm](http://www.sec.gov/news/speech/spch486.htm)). BSA compliance with non-suspicious activity reporting related provisions has been included in the SEC’s examination and enforcement programs since the 1970s, and in the SROs’ programs since 1982. The New York Stock Exchange and the National Association of Securities Dealers have both issued statements dating back to 1989 regarding the importance of suspicious activity reporting to avoid money laundering charges. See Report to the Chairman, Permanent Subcommittee on Investigations, Committee on Governmental Affairs, U.S. Senate, Anti-Money Laundering Efforts in the Securities Industry, GAO-02-

1996, banks, thrifts, and other banking organizations became subject to a requirement to report suspicious transactions pursuant to final rules issued by FinCEN,<sup>5</sup> under the authority contained in 31 U.S.C. 5318(g). In collaboration with FinCEN, the federal bank supervisors (the Board of Governors of the Federal Reserve System (“Federal Reserve”), the Office of the Comptroller of the Currency (“OCC”), the Federal Deposit Insurance Corporation (“FDIC”), the Office of Thrift Supervision (“OTS”), and the National Credit Union Administration (“NCUA”)) concurrently issued suspicious transaction reporting rules under their own authority. See 12 CFR 208.62 (Federal Reserve Board); 12 CFR 21.11 (OCC); 12 CFR 353.3 (FDIC); 12 CFR 563.180 (OTS); and 12 CFR 748.1 (NCUA). The bank supervisory agency rules apply to banks, non-depository institution affiliates and subsidiaries of banks and bank holding companies (including broker-dealers), and bank holding companies (including bank holding companies that are themselves broker-dealers).<sup>6</sup> The final rule contained in this

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111, October 2001, at 22.

<sup>5</sup> See 31 CFR 103.18. The suspicious transaction reporting rules under the BSA for banking organizations previously appeared at 31 CFR 103.21 before that section was renumbered as 31 CFR 103.18. See 65 FR 13683, 13692 (March 14, 2000).

<sup>6</sup> For example, 12 CFR 225.4(f) subjects non-bank subsidiaries of bank holding companies to the suspicious transaction reporting requirements of Regulation H of the Board of Governors at 12 CFR 208.62. Broker-dealers to which the bank supervisory agency rules for suspicious transaction reporting currently apply represent approximately half of the business of the broker-dealer industry, although in terms of numbers, they are only a small percentage of the approximately 8,300 broker-dealers in the United States.

document applies to all broker-dealers, without regard to whether they are affiliates or subsidiaries of banks or bank holding companies.<sup>7</sup>

Anti-Money Laundering Compliance Programs. The provisions of 31 U.S.C. 5318(h), added to the BSA in 1992 by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act, authorize the Secretary of the Treasury “[i]n order to guard against money laundering through financial institutions . . . [to] require financial institutions to carry out anti-money laundering programs.” 31 U.S.C. 5318(h)(1). Those programs may include “the development of internal policies, procedures, and controls”; “the designation of a compliance officer”; “an ongoing employee training program”; and “an independent audit function to test programs.” 31 U.S.C. 5318(h)(A-D). Section 352 of the USA Patriot Act amended section 5318(h) to require all entities defined as “financial institutions” under the BSA, including broker-dealers, to develop and implement anti-money laundering programs by April 24, 2002.

On April 23, 2002, FinCEN promulgated regulations under section 352 of the USA Patriot Act.<sup>8</sup> Among other things, the rules provide that broker-dealers will be

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<sup>7</sup> Money transmitters, issuers, sellers, and redeemers of money orders, and issuers, sellers, and redeemers of traveler’s checks are subject to a similar reporting requirement pursuant to a final rule published in the Federal Register on March 14, 2000. See 31 CFR 103.20. Under that rule, reporting is required for suspicious transactions involving or aggregating at least \$2,000 in general or at least \$5,000 in the case of issuers of money orders and traveler’s checks to the extent the transactions to be reported are identified from a review of clearance records and similar documents. Finally, FinCEN has proposed a rule that would require casinos and card clubs to report suspicious transactions involving or aggregating at least \$3,000. See 63 FR 27230 (May 18, 1998), and 67 FR 15138 (March 29, 2002).

<sup>8</sup> See 67 FR 21110 – 21127 (April 29, 2002).

deemed to be in compliance with section 352 of the USA Patriot Act if they establish and maintain anti-money laundering programs as required by the SEC or SROs. The SEC has recently published Orders approving rules proposed by the National Association of Securities Dealers, Inc. (“NASD”), the New York Stock Exchange, Inc. (“NYSE”), and the Philadelphia Stock Exchange, requiring member organizations to develop and implement anti-money laundering programs.<sup>9</sup> The rules were drafted to provide minimum standards for the mandatory anti-money laundering program requirement contained in section 352 of the USA Patriot Act. In addition, these securities self-regulatory organization rules will also require broker-dealers to have compliance programs for suspicious transaction reporting.<sup>10</sup>

### III. Notice of Proposed Rulemaking.

On December 31, 2001, FinCEN published a notice of proposed rulemaking (the “Notice”), 66 FR 67670, that would extend the requirement to report suspicious transactions to broker-dealers. The comment period for the Notice ended on March 1, 2002. FinCEN received 13 comment letters on the Notice. Of these, six were submitted

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<sup>9</sup> See 67 FR 20854 (April 26, 2002), and 67 FR 40366 (June 12, 2002).

<sup>10</sup> Existing securities law and self-regulatory organization rules will ensure that broker-dealers have suspicious activity reporting rule compliance programs in place. In particular, Section 19(g) of the Exchange Act provides that “[e]very self-regulatory organization shall comply with the provisions of this title, the rules and regulations thereunder, and its own rules, and . . . absent reasonable justification or excuse enforce compliance.” Both the National Association of Securities Dealers and the New York Stock Exchange have promulgated compliance program rules. See NASD Rule 3010 and NYSE Rule 342, including Supplemental Material .30. Rule 17a-8 of the Exchange Act requires broker-dealers to comply with applicable BSA rules. Accordingly, broker-dealers will be required under existing rules to develop compliance programs for the

by trade associations, two by financial holding companies, and one each by a mutual fund complex, bank, law firm, government agency, and compliance company.

IV. Summary of Comments and Revisions.

A. Introduction.

The format of the final rule is generally consistent with the Notice. The terms of the final rule, however, differ from the terms of the Notice in the following significant respects:

- The categories of reportable activity have been streamlined and reorganized to clarify that all violations of law, other than those specifically exempted by the rule, are within the scope of required reporting;
- An exception from reporting relating to robbery or burglary has been added to the rule;
- Language has been added to clarify that only one report is required to be filed with respect to a reportable transaction, to avoid double reporting on the same transaction by, for example, an introducing broker and a clearing broker.

B. Comments—General Issues

Comments on the Notice discussed several general matters including: (1) the appropriate degree of similarity between the rule and suspicious transaction reporting

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broker-dealer SAR rule proposed in this document.

rules promulgated by the federal banking supervisory agencies under Title 12; (2) the exceptions from reporting for violations of securities laws and SRO rules; (3) the relationship of introducing and clearing brokers in the context of suspicious transaction reporting; (4) the application of the rule to entities that are dually registered as broker-dealers and futures commission merchants; (5) treatment of sellers of variable annuities under the rule; (6) application of the rule to registered broker-dealers located outside the United States; and (7) application of only one set of suspicious transaction reporting rules to broker-dealer affiliates and subsidiaries of bank holding companies.

1. Similarity of the Rule with Title 12 Rules. The Notice proposed requiring a broker-dealer to report two categories of transactions involving or aggregating at least \$5,000. The first category consisted of known or suspected federal criminal violations when the broker-dealer is either an actual or potential victim of a criminal violation, or the broker-dealer is used to facilitate a criminal transaction. This category of transaction appears in the suspicious activity reporting rules currently applicable to depository institutions under Title 12 promulgated by the federal banking supervisory agencies, but does not appear in suspicious transaction reporting regulations promulgated by FinCEN under Title 31 for banks and money services businesses (and proposed for casinos). The second category consisted of transactions that (1) involve illegally derived funds (money laundering), (2) appear designed for the purpose of evading BSA requirements, or (3) are unusual, either because they do not seem to be designed to make economic sense, or they

are unusual for the particular customer. This second category of reportable transactions appears in both the Title 12 and Title 31 suspicious transaction reporting rules.

Commenters raised several issues about the degree to which the rule proposed in the Notice should be harmonized with the Title 12 suspicious transaction reporting rules. Several commenters argued that for the first category of reportable transactions, the final rule should adopt the three-tiered reporting threshold that appears in the Title 12 rules. Under the Title 12 rules, where a broker-dealer is either an actual or potential victim of a criminal violation, or the broker-dealer is used to facilitate a criminal transaction, the reporting threshold is zero for transactions involving insider abuse, and \$5,000 for other types of transactions (or \$25,000 if a suspect cannot be identified).

The final rule does not adopt the three-tiered reporting threshold contained in the Title 12 rules. FinCEN's Title 31 SAR rule for banks does not contain a tiered reporting threshold. Rather, the reporting threshold in FinCEN's bank SAR rule is \$5,000, regardless of the nature of the suspicious transaction required to be reported. Moreover, as the reporting of insider abuse largely has been carved out of this rule, FinCEN does not believe that it is necessary to adopt the Title 12 threshold for transactions involving insider abuse. The final rule also does not adopt a \$25,000 reporting threshold for transactions in which a broker-dealer cannot identify a suspect. First, broker-dealers operate in such a way that in most cases, the identity of their customers will be known to them. Second, the type of activity likely to be reported by a broker-dealer under circumstances where the broker-dealer cannot identify the customer, such as identity theft

or fraud, is the sort of activity that this rule is intended to capture, and its reporting should not be limited. Therefore, the reporting threshold for all categories of suspicious transactions required to be reported under the final rule is \$5,000.

One commenter argued that, in including the first category of reporting in the Notice, FinCEN exceeded its authority under Section 5318(g) and the USA Patriot Act, contending that this category is not contained in the suspicious transaction reporting rules promulgated by FinCEN under Title 31 with respect to banks and money services businesses. As noted above, the USA Patriot Act imposes upon Treasury a deadline for publication of a final rule requiring broker-dealers to file suspicious transaction reports; the statutory authority under which Treasury implements suspicious transaction reporting rules is contained in 31 U.S.C. 5318(g)(2), which was enacted in 1992. That section authorizes the Secretary of the Treasury to require a financial institution to “report any suspicious transaction relevant to a possible violation of law or regulation.” Thus, it is within Treasury’s authority to require the reporting of any suspected criminal activity occurring at a financial institution.

Although the first category of reporting does not appear in other Title 31 suspicious transaction reporting rules, it was included in the Notice to ensure that transactions involving legally-derived funds that the broker-dealer suspects are being used for a criminal purpose (for example, transactions that the broker-dealer suspects are designed to fund terrorist activity) would be reported under the rule. Such transactions should be reported under language that already exists in the Title 31 rules. Each rule

requires the reporting of a transaction that “has no business or apparent lawful purpose.” FinCEN believes that this broad language should be interpreted to require the reporting of transactions that appear unlawful for virtually any reason. Nevertheless, the Notice added the language in its first reporting category to make explicit that transactions being carried out for the purpose of conducting illegal activities, whether or not funded from illegal activities, must be reported under the rule. The intent of including this category of reporting is to ensure reporting of situations in which a broker-dealer is being abused by a customer in furtherance of the customer’s criminal activities. Because the comments showed some degree of confusion with the language in the first reporting category in the Notice, this category of reporting has been streamlined and re-organized, at paragraph (a)(2)(iv), to clarify that, subject to the explicit exceptions from reporting contained in paragraph (c) of the final rule (relating to robbery, burglary, lost, missing, counterfeit, or stolen securities, and violations of the federal securities law or rules of an SRO), all criminal violations are required to be reported under the final rule.<sup>11</sup>

The second category of reportable transactions in the Notice requires a broker-dealer to report transactions if the broker-dealer knows, suspects, or has reason to suspect that the transaction (or pattern of transactions of which the transaction is a part) falls within one of the three classes explained above. Some commenters argued that the

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<sup>11</sup> Two commenters requested that the final rule harmonize penalty provisions relating to this category of reportable activity with the penalty provisions applicable to the reporting of such transactions under Title 12. However, the penalties applicable in instances of failure to comply with the requirement contained in this rule are mandated by statute, and cannot be modified by FinCEN. See 31 U.S.C. 5321 and 5322.

language referring to the reporting of patterns of transactions should be deleted from the rule, urging that it would be unfair to require broker-dealers to report patterns of suspicious transactions, given that the Title 12 and Title 31 suspicious transaction reporting rules applicable to banks do not contain language relating to patterns of suspicious transactions.

The language in the rule requiring the reporting of patterns of transactions is not intended to impose an additional reporting burden on broker-dealers. Rather, it is intended to recognize the fact that a transaction may not always appear suspicious standing alone. In some cases, a broker-dealer may only be able to determine that a suspicious transaction report must be filed after reviewing its records, either for the purposes of monitoring for suspicious transactions, auditing its compliance systems, or during some other review. The language relating to patterns of transactions is intended to make explicit the requirement that FinCEN believes implicitly exists in the suspicious transaction reporting rules for banks: if a broker-dealer determines that a series of transactions that would not independently trigger the suspicion of the broker-dealer, but that taken together, form a suspicious pattern of activity, the broker-dealer must file a suspicious transaction report.<sup>12</sup> For this reason, the pattern of transactions language has been retained in the final rule.

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<sup>12</sup> Indeed, broker-dealers are experienced in reviewing patterns or series of transactions under the federal securities laws for the purpose of identifying securities law violations. See, e.g., 15 U.S.C. 78i(a).

2. Exceptions from reporting. Several commenters raised issues relating to the exceptions from reporting contained in the Notice. Although generally supporting the exception from reporting relating to violations of federal securities laws or SRO rules by the broker-dealer or any of its associated persons, commenters argued that the exception should not contain a condition requiring a broker-dealer to report the violation to the SEC or an SRO. Commenters argued that existing SEC regulations and SRO rules do not require that all securities violations be reported to the SEC or an SRO, and that the requirement to report suspicious activity to Treasury should not encompass such violations. In addition, commenters suggested that the exception should be broadened to cover securities law violations by a customer of the broker-dealer.

Because the suspicious activity reporting regime established by the final rule implicates a broad array of law enforcement concerns, the exception from reporting has not been expanded. The SEC and SROs already have established a regulatory structure for reporting and maintaining data about securities law violations by broker-dealers. It is not FinCEN's intent in promulgating the final rule to duplicate these efforts. The exception continues to permit a broker-dealer to handle the reporting of a violation of securities laws or rules by the broker-dealer (or any of its officers, directors, employees, or other registered representatives) under existing industry procedures (whether formal or informal) rather than through a Suspicious Activity Report – Brokers or Dealers in Securities (“SAR-BD”). If a broker-dealer does not in fact report under existing securities industry procedures a violation of securities law or rules by the broker-dealer or

any of its associated persons that otherwise would be required to be reported under the terms of the final rule, even in situations in which the rules of the SEC or an SRO would not require a broker-dealer to report such a transaction, the broker-dealer must file a SAR-BD. The final rule continues to provide that the exception from reporting does not apply if the securities law or SRO rule violation is a violation of 17 CFR 240.17a-8 or 17 CFR 405.4 (the regulations that require broker-dealers and government securities broker-dealers, respectively, to comply with the BSA rules). In these situations, the broker-dealer is to report the violation on a SAR-BD.

In response to comments requesting clarification that the language in the exception alters neither the standard for reporting suspicious activity to Treasury, nor any reporting requirements of the SEC or an SRO, the exception to reporting no longer applies to “possible” violations of securities laws or rules. Instead, the exception applies to a “violation otherwise required to be reported” on a SAR-BD that is a violation of securities laws or rules. Thus, the exception applies to a transaction that a broker-dealer knows, suspects, or has reason to suspect involves a violation by a broker-dealer or any of its associated persons of securities laws or rules, or rules of an SRO, so long as the broker-dealer in fact reports the transaction under existing securities industry procedures. Finally, one commenter suggested that the rule should contain an exception for reporting in the case of a robbery or burglary that is reported by the broker-dealer to appropriate authorities, noting that the suspicious activity reporting rules applicable to banks contain such an exception. The final rule adopts this suggestion.

3. Introducing and clearing brokers. Securities transactions may be conducted by broker-dealers that clear their own transactions or by introducing brokers that rely on another firm to clear the transactions. Several commenters recommended that the final rule address the requirement to file a suspicious activity report when both an introducing and clearing broker are involved in a transaction. In particular, the commenters requested that the final rule provide that only one suspicious activity report is required to be filed in this situation. The final rule provides that the obligation to identify and report a suspicious transaction rests with each broker-dealer involved in the transaction, but that only one SAR-BD is required to be filed, provided that the report includes all the relevant facts concerning the transaction. It is FinCEN's expectation that introducing and clearing broker-dealers wishing to take advantage of this provision with respect to a particular transaction will communicate with each other about the transaction for purposes of sharing information about the transaction, and determining which broker-dealer will file the SAR. In cases in which such communication is appropriate and results in the filing of a SAR, the broker-dealer that has actually filed that SAR may share with the broker-dealer with which the communication was had under paragraph (a)(3), a copy of the filed SAR. However, the limitations found in 31 U.S.C. 5318(g)(2) on further dissemination of the SAR-BD and disclosure of the fact of its filing apply equally to both broker-dealers. Moreover, in certain instances, communication between two broker-dealers about a suspicious transaction and the fact of filing of a SAR-BD would be inappropriate. For example, a broker-dealer that suspects that it is required to report another broker-

dealer or one of its employees as the subject of a SAR would be prohibited from notifying the other broker-dealer that a SAR has been filed, because to do so would reveal, or risk revealing, to the subject of a SAR that a SAR has been filed.

The purpose of including this provision in the rule is to allow two broker-dealers that have participated in the same transaction to file only one SAR-BD. In addition, section 314(b) of the USA Patriot Act permits two or more financial institutions and any association of financial institutions upon notice to Treasury to “share information with one another regarding individuals, entities, organizations, and countries suspected of possible terrorist or money laundering activities.” On March 4, 2002, FinCEN promulgated an Interim rule and Notice of Proposed Rulemaking relating to information sharing under section 314(b).<sup>13</sup> Language in section 314(b) protects financial institutions disclosing information in accordance with the statutory provision or regulations promulgated thereunder, from liability for such disclosures or for failure to provide notice of such disclosures to the person who is the subject of the disclosure.

4. Futures commission merchants. Several commenters raised issues about the application of the Notice to the futures and options activities of dual registrants—persons registered both with the Commodity Futures Trading Commission (“CFTC”) as a futures commission merchant (“FCM”) and with the SEC as a broker-dealer. According to the commenters, the Notice creates an ambiguity concerning the extent to which dual registrants are subject to the proposed suspicious transaction reporting rule. The Notice

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<sup>13</sup> The Interim rule appears at 67 FR 9874 (March 4, 2002), and the Notice of

applies to transactions by, at, or through a broker-dealer, and while the terms of the Notice defining “transaction” do not specifically address a contract of sale of a commodity for future delivery or commodity option, the language of that definition, the commenters argued, makes it unclear whether the futures and options activities of dual registrants are covered. The commenters, citing section 356(b) of the USA Patriot Act,<sup>14</sup> recommended that FinCEN proceed with a separate rulemaking specifically for FCMs if it wishes to subject the futures and options activities of dual registrants to suspicious transaction reporting. In response to the comments, FinCEN wishes to clarify that the final rule does not apply to dual registrants to the extent of their activities subject to the exclusive jurisdiction of the CFTC. (The final rule does apply, however, to activities of dual registrants involving securities futures products, and to any other products over which the SEC or another federal agency also has jurisdiction, because such products are not subject to the CFTC’s exclusive jurisdiction.)

5. Persons selling variable annuities. As explained in the Notice, persons required to register as broker-dealers solely to permit the sale of variable annuities of life insurance companies will be required to report suspicious transactions. (See 66 FR 67672.) In 1972, Treasury granted such persons an exemption from the provisions of 31 CFR Part 103 (See 37 FR 248986, 248988, November 23, 1972). This exemption is

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Proposed Rulemaking appears at 67 FR 9879 (March 4, 2002).

<sup>14</sup> Section 356(b) provides that the Secretary, in consultation with the CFTC, may prescribe regulations requiring FCMs (and commodity trading advisors and commodity pool operators) registered under the Commodity Exchange Act to submit suspicious transaction reports under 31 U.S.C. 5381(g). Treasury is currently consulting with the

being withdrawn in a separate document published elsewhere in this issue of the Federal Register. As a result, a person registered with the SEC as a broker-dealer solely to offer and sell variable annuity contracts issued by life insurance companies will be subject to the suspicious activity reporting rules of 31 CFR 103.19 and all other BSA requirements to the extent they offer and sell such contracts.

6. Broker-dealers outside the United States. The Notice relies on the definition of broker-dealer in existing 31 CFR 103.11(f)—any “broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.” As a result, one commenter requested that the final rule clarify that the new suspicious transaction rule does not apply to broker-dealers registered with the SEC but located outside the United States. The final rule makes the requested clarification.

7. Broker-dealer affiliates or subsidiaries of banks and bank holding companies. As explained above, broker-dealers that are affiliates or subsidiaries of banks or bank holding companies are already required to report suspicious transactions under the Title 12 rules promulgated by the banking supervisory agencies. In order to ensure that broker-dealers are only subject to one suspicious transaction reporting requirement, FinCEN has requested that the federal banking supervisory agencies amend their regulations to exempt broker-dealers from having to report suspicious transactions under Title 12 rules.

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CFTC about such regulations.

One commenter asked that the final rule amend 31 CFR 103.18, which requires banks to report suspicious transactions, to make that rule inapplicable to broker-dealer affiliates of banks. This is unnecessary. The part 103 rules do not look to the status of a parent company in a bank holding company group for the purpose of determining what rules a company owned by the parent must apply. For example, the part 103 rules do not treat non-bank subsidiaries of bank holding companies as falling within the definition of bank for purposes of the part 103 regulations. Thus, a broker-dealer affiliate or subsidiary of a bank or bank holding company is subject to the suspicious transaction reporting rules in 31 CFR 103.19, rather than the rules applicable to depository institutions in 31 CFR 103.18.

V. Section-by-Section Analysis.

A. 103.11(ii)—Transaction.

The final rule amends the definition of “transaction” in the BSA regulations explicitly to include the term “security,” itself defined in new paragraph 103.11(w) as explained below. Some commenters argued that the definition of “transaction” should be changed to make it identical to the definition of “transaction” that appears in the suspicious transaction reporting rules promulgated by the federal banking supervisory agencies.<sup>15</sup> However, the definition of transaction contained in paragraph 103.11(ii)

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<sup>15</sup> See, e.g., 12 CFR 208.62(c)(4), defining “transaction” for purposes of reporting potential money laundering, violations of the BSA, or transactions with no business or apparent lawful purpose, as “a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument or investment security, or any

applies to all the requirements of, and entities subject to, the BSA regulations found in 31 CFR Part 103, and FinCEN does not believe that it would be appropriate to make such a far-reaching change in order to reflect the definitional language in a different title that is administered by other agencies. As banks already must comply with the BSA obligations of 31 CFR Part 103 pursuant to its definition of “transaction,” there will be no discrepancy in the treatment of regulated entities by retaining this definition.

B. 103.11(w) — Security.

The final rule adds a definition of “security” to 31 CFR Part 103 that includes any instrument or interest that falls within the definition of “security” in Section (3)(a)(10) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(10). The addition of a definition of “security” to the BSA regulations, and the corresponding addition of this term to the definition of “transaction” contained in paragraph 103.11(ii), is necessary to ensure that the reporting requirement conforms to the definition of “broker or dealer in securities” contained in 31 CFR 103.11(f), so as to cover all activity that should be reported under the rule.

C. 103.19(a) – Reports by Broker-Dealers of Suspicious Transactions -- General.

Paragraph 103.19(a)(1) generally sets forth the requirement that broker-dealers located within the United States report suspicious transactions to the Department of the Treasury. The paragraph also permits, but does not require, a broker-dealer voluntarily to file a suspicious transaction report in situations in which mandatory reporting is not

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other payment, transfer, or delivery by, through, or to a financial institution, by whatever

required. In light of the definition of “broker or dealer in securities” in 31 CFR

103.11(f), reporting would be required by any:

broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

In response to a comment about the scope of this definition, FinCEN wishes to clarify that this definition covers brokers and dealers registered or required to be registered with the SEC, whether under section 15, 15B, or 15C(a)(1)(A) of the Securities and Exchange Act of 1934.<sup>16</sup>

Paragraph (a)(2) provides that a transaction requires reporting under the rule if it is conducted or attempted by, at, or through a broker-dealer, involves or aggregates at least \$5,000 in funds or other assets (such as securities), and the broker-dealer knows, suspects, or has reason to suspect that the transaction falls within one of four categories of transactions. It should be noted that transactions require reporting under the final rule whether or not they involve currency.

1. Dollar Threshold for Reporting. The final rule continues to require reporting of suspicious transactions of at least \$5,000. As the Notice explained, the rule is not intended to require broker-dealers mechanically to review every transaction that exceeds the reporting threshold. Rather, it is intended that broker-dealers, and indeed every type of financial institution to which the suspicious transaction reporting rules of 31 CFR Part

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means effected.”

<sup>16</sup> The preamble of the Notice provided specific citations to the definitions of “broker,” “dealer,” and “security” under the Securities and Exchange Act of 1934 for illustrative purposes only, and not to limit in any way the scope of the definition found at

103 apply, will evaluate customer activity and relationships for money laundering risks, and design a suspicious transaction monitoring program that is appropriate for the particular broker-dealer in light of such risks. In other words, it is expected that broker-dealers will follow a risk-based approach in monitoring for suspicious transactions, and will report all detected suspicious transactions that involve \$5,000 or more in funds or other assets.

2. Reporting Standard. Paragraph (a)(2) requires reporting if a broker-dealer “knows, suspects, or has reason to suspect” that a transaction requires reporting under the rule. This reporting standard reflects a concept of due diligence in the reporting requirement. One commenter argued that the “has reason to suspect” language should be removed, and that the issue of due diligence should be addressed as a matter of assessing the adequacy of a broker-dealer’s anti-money laundering compliance program. The final rule retains the “has reason to suspect” language. FinCEN believes that compliance with the rule cannot be adequately enforced without an objective standard. The reason-to-suspect standard means that, on the facts existing at the time, a reasonable broker-dealer in similar circumstances would have suspected the transaction was subject to SAR reporting. This is a flexible standard that adequately takes into account the differences in operating realities among various types of broker-dealers, and is the standard contained in the existing SAR rules for depository institutions and money services businesses. A regulator’s review of the adequacy of a broker-dealer’s anti-money laundering

compliance program is not a substitute for, although it could be relevant to, an inquiry into the failure of a broker-dealer to report a particular suspicious transaction.

3. Scope of Reporting. Paragraph (a)(2) contains four categories of reportable transactions. The first category, described in paragraph (a)(2)(i), includes transactions involving funds derived from illegal activity or intended or conducted to hide or disguise funds or assets derived from illegal activity. The second category, described in paragraph (a)(2)(ii), involves transactions designed, whether through structuring or other means, to evade the requirements of the BSA. The third category, described in paragraph (a)(2)(iii), involves transactions that appear to serve no business or apparent lawful purpose or are not the sort of transactions in which the particular customer would be expected to engage, and for which the broker-dealer knows of no reasonable explanation after examining the available facts. The fourth category, described in paragraph (a)(2)(iv), involves the use of the broker-dealer to facilitate criminal activity. As explained above, the fourth category of reportable transactions is intended to cover transactions intended to further a criminal purpose, but apparently involving legally-derived funds.

One commenter argued that the requirement to report transactions that are unusual for the particular customer should be removed, because it is overly burdensome to require a broker-dealer to report transactions that could not definitively be linked to wrongdoing. However, FinCEN believes that it is appropriate to include transactions that vary so substantially from normal practice that they legitimately can and should raise suspicions

of possible illegality. For a discussion of this category as a “red flag,” see NASD Notice to Members 02-21, NASD Provides Guidance to Member Firms Concerning Anti-Money Laundering Compliance Programs Required by Federal Law (April 2, 2002), available on the NASD website, [www.nasd.com](http://www.nasd.com).

Several commenters requested that FinCEN clarify that the rule does not require the reporting of suspected violations of state or foreign law. The final rule does not exclude the reporting of all violations of state law (rather, as explained below, certain state law crimes, such as burglary, have been specifically excepted from the reporting requirement). The final rule also does not explicitly carve out the reporting of suspected violations of foreign law. Particularly with respect to fraud and money laundering, it would be difficult for a broker-dealer to determine whether the suspected illegal activity involved in the transaction related to violations of state or foreign law. Moreover, violation of state law, or even foreign law, can be relevant to federal crimes, especially in money laundering cases brought under 18 U.S.C. 1956, 1957, or 1960, in which violations of state or foreign law may serve as a predicate for a federal offense.

4. Allocation of Responsibility for Reporting. As noted above, paragraph (a)(3) provides that the obligation to identify and report a suspicious transaction rests with each broker-dealer involved in the transaction, but only one SAR-BD is required to be filed, provided that the report includes all the relevant facts concerning the transaction.

Guidance issued by the NASD addresses the need for introducing and clearing firms to

make information available to one another for purposes of suspicious activity reporting.<sup>17</sup> In addition, it should be noted that the final rule does not require a broker-dealer to alter its relationship with its customers in a way that is inconsistent with industry practice. For example, commenters expressed concern that certain entities covered by the rule (e.g., clearing brokers), which may not have the same level of knowledge with respect to their customers as other entities covered by the rule would normally be expected to have, would be expected to re-structure their relationships with customers in order to comply with the rule. FinCEN recognizes that, based on the nature of the services they provide to their customers, certain types of broker-dealers will have more information available to them in making such determinations than other types of broker-dealers.<sup>18</sup> The rule is intended to adjust to the different operating realities found in different types of financial institutions.

D. 103.19(b)--Filing procedures.

Paragraph (b) continues to set forth the filing procedures to be followed by broker-dealers making reports of suspicious transactions. Within 30 days after a broker-dealer becomes aware of a suspicious transaction, the broker-dealer must report the transaction by completing a SAR-BD and filing it in a central location, to be determined by FinCEN. Some commenters requested that broker-dealers be permitted to use the suspicious transaction reporting form currently used by banks, because many broker-

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<sup>17</sup> See NASD Notice to Members 02-21.

<sup>18</sup> Customer identification and verification requirements will be dealt with in forthcoming rules to be issued under section 326 of the USA Patriot Act.

dealers are already familiar with the form, having used it to file SARs either on a voluntary basis, or as required under the federal banking supervisory rules. However, FinCEN believes that a reporting form tailored to the broker-dealer industry will promote better reporting and result in a more useful collection of information.

If a broker-dealer is unable to identify a suspect on the date the suspicious transaction is initially detected, the rule provides the broker-dealer with an additional 30 calendar days to identify the suspect before filing a SAR-BD, but the suspicious transaction must be reported within 60 calendar days after the date of initial detection of the suspicious transaction, whether or not the broker-dealer is able to identify a suspect.

One commenter suggested that it is overly burdensome to require a broker-dealer, in situations involving violations requiring immediate attention, to notify by telephone both an appropriate law enforcement authority and the SEC. To accommodate this concern, the final rule requires a broker-dealer to immediately notify by telephone an appropriate law enforcement authority only in situations that require immediate attention, such as terrorist financing or ongoing money laundering schemes. Broker-dealers may also, but are not required to, contact the SEC in such situations. In addition, the rule reminds broker-dealers of FinCEN's Financial Institutions Hotline (1-866-556-3974) for use by financial institutions wishing voluntarily to report to law enforcement suspicious transactions that may relate to terrorist activity. Broker-dealers reporting suspicious activity by calling the Financial Institutions Hotline must still file a timely SAR-BD to the extent required by the final rule.

E. 103.19(c)—Exceptions.

Paragraph (c) contains exceptions from the reporting requirement. Paragraph (c)(1)(i) provides that a broker-dealer is not required to report under the final rule a robbery or burglary that the broker-dealer reports to an appropriate law enforcement authority, or lost, missing, counterfeit, or stolen securities that the broker-dealers reports in accordance with existing SEC rules. Paragraph (c)(1)(ii) permits the reporting of a violation of federal securities laws or rules of an SRO by a broker-dealer or any of its associated persons under existing industry procedures rather than through a SAR-BD. The exception does not apply, however, if the securities law or SRO rule violation is a violation of 17 CFR 240.17a-8 or 17 CFR 405.4. Such violations must be reported on a SAR-BD.

F. 103.19(d)--Retention of records.

Paragraph (d) continues to provide that broker-dealers must maintain copies of SAR-BDs they file and the original related documentation (or business record equivalent) for a period of five years from the date of filing. Supporting documentation is to be made available to FinCEN, appropriate law enforcement authorities or federal securities regulators, or an SRO registered with the SEC for purposes of examining the broker-dealer for compliance with this rule.

G. 103.19(e)—Confidentiality of Reports.

Paragraph (e) continues to incorporate the terms of 31 U.S.C. 5318(g)(2) and (g)(3). Thus, this paragraph specifically prohibits persons filing reports in compliance

with the final rule from disclosing, except to FinCEN, the SEC, or another appropriate law enforcement or regulatory agency, or an SRO registered with the SEC conducting an examination of the broker-dealer for compliance with the final rule, that a report has been filed or from providing any information that would disclose that a report has been prepared or filed. This paragraph does not prohibit an introducing broker and a clearing broker from discussing with each other, for purposes of paragraph (a)(3), suspicious activity involving a transaction with respect to which both broker-dealers have been involved, and the determination which broker-dealer will file the SAR in such a case. In addition, as noted above, section 314(b) of the USA Patriot Act permits financial institutions, upon providing notice to Treasury, to share information with one another solely for the purpose of identifying and reporting to the federal government activities that may involve money laundering or terrorist activity.

H. 103.19(f)—Limitation of Liability.

Paragraph (f) continues to restate the broad protection from liability for making reports of suspicious transactions (whether such reports are required by the final rule or made voluntarily), and for failure to disclose the fact of such reporting, contained in the statute as amended by the USA Patriot Act. The paragraph reflects amendments to the statutory safe harbor that were made under section 351 of the USA Patriot Act, including specific application of the safe harbor to voluntary reports of suspicious transactions, and availability of the safe harbor in the arbitration of securities industry disputes. The regulatory provisions do not extend the scope of either the statutory prohibition or the

statutory protection; however, because FinCEN recognizes the importance of these statutory provisions in the overall effort to encourage meaningful reports of suspicious transactions and to protect the legitimate privacy expectations of those who may be named in such reports, they are repeated in the rule to remind compliance officers and others of their existence.

I. 103.19(g)—Examination and Enforcement.

Paragraph (g) continues to provide that compliance with the rule will be examined by FinCEN or its delegees,<sup>19</sup> and that a broker-dealer must provide copies of a filed SAR-BD to an SRO registered with the SEC that is examining a broker-dealer for compliance with the rule.

J. 103.19(h)--Effective Date.

Paragraph (h) continues to provide a 180-day period before which compliance with the final rule will become mandatory. Broker-dealers required to comply with suspicious transaction reporting rules promulgated by the federal banking supervisory agencies should continue complying with such requirements until reporting under the terms of this final rule is required. Two commenters requested that FinCEN create a mechanism for broker-dealers to request an extension of the effective date of the final rule. Given the 180-day period before compliance with the requirement is required under the rule, FinCEN does not believe such a procedure is necessary.

VI. Executive Order 12866.

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<sup>19</sup> See 31 CFR 103.56(b)(6) (delegating examination authority for broker-dealers

The Department of the Treasury has determined that this proposed rule is not a significant regulatory action under Executive Order 12866.

VII. Regulatory Flexibility Act.

FinCEN certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities. All broker-dealers, regardless of their size, are currently subject to the BSA. Procedures currently in place at broker-dealers to comply with existing BSA rules should help broker-dealers identify suspicious transactions. Finally, certain small broker-dealers may have an established and limited customer base whose transactions are well-known to the broker dealer.

VIII. Paperwork Reduction Act.

The collection of information contained in this final regulation has been approved by the Office of Management and Budget (“OMB”) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1506-0019. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection of information in this final rule is in 31 CFR 103.19(d). This information is required to be provided pursuant to 31 U.S.C. 5318(g) and 31 CFR 103.20. This information will be used by law enforcement agencies in the enforcement of criminal and regulatory laws. The collection of information is mandatory. The likely recordkeepers are businesses.

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to the SEC).

The estimated average recordkeeping burden associated with the collection of information in this final rule is four hours per recordkeeper. Although the estimated average recordkeeping burden contained in the Notice was three hours, the burden has been revised in response to a comment arguing that the estimate should better reflect the amount of time involved in analyzing whether complex transactions require reporting under the rule. This burden relates to the recordkeeping requirement contained in the final rule. The reporting burden of 31 CFR 103.19 will be reflected in the burden of the form, SAR-BD.

FinCEN anticipates that the final rule will result in an annual filing of a total of 2,000 SAR-BD forms. This result is an estimate extrapolated from the number of suspicious activity reports currently being filed by the broker-dealer industry either on a mandatory basis under the bank supervisory agency rules or voluntarily. One commenter suggested that this estimate is too low. FinCEN will monitor the filing of Suspicious Activity Report-BD under the final rule in order to determine whether this number should be revised.

Comments concerning the accuracy of this burden estimate should be directed to the Financial Crimes Enforcement Network, Department of the Treasury, Post Office Box 39, Vienna, VA 22183, and to the Office of Management and Budget, Attn: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

**List of Subjects in 31 CFR Part 103**

Authority delegations (Government agencies), Banks, banking, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons set forth above in the preamble, 31 CFR Part 103 is amended as follows:

**PART 103 -- FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS**

1. The authority citation for Part 103 continues to read as follows:

**Authority:** 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5332; title III, secs. 314, 352, Pub. L. 107-56, 115 Stat. 307.

2. In § 103.11, paragraph (ii)(1) is revised and new paragraph (ww) is added to read as follows:

**§ 103.11 Meaning of terms.**

\* \* \* \* \*

(ii) Transaction. (1) Except as provided in paragraph (ii)(2) of this section, transaction means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument or security, purchase or redemption of any money order, payment or order for any money remittance

or transfer, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

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(ww) Security. Security means any instrument or interest described in section 3(a)(10) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(10).

3. In Subpart B, add new section 103.19 to read as follows:

**103.19 Reports by brokers or dealers in securities of suspicious transactions.**

(a) General. (1) Every broker or dealer in securities within the United States (for purposes of this section, a “broker-dealer”) shall file with FinCEN, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. A broker-dealer may also file with FinCEN a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section. Filing a report of a suspicious transaction does not relieve a broker-dealer from the responsibility of complying with any other reporting requirements imposed by the Securities and Exchange Commission or a self-regulatory organization (“SRO”) (as defined in section 3(a)(26) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(26)).

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through a broker-dealer, it involves or aggregates funds or other assets of at least \$5,000, and the broker-dealer knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy Act, Public Law 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5332;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the broker-dealer to facilitate criminal activity.

(3) The obligation to identify and properly and timely to report a suspicious transaction rests with each broker-dealer involved in the transaction, provided that no more than one report is required to be filed by the broker-dealers involved in a particular transaction (so long as the report filed contains all relevant facts).

(b) Filing procedures--(1) What to file. A suspicious transaction shall be reported by completing a Suspicious Activity Report – Brokers or Dealers in Securities

(“SAR-BD”), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) Where to file. The SAR-BD shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SAR-BD.

(3) When to file. A SAR-BD shall be filed no later than 30 calendar days after the date of the initial detection by the reporting broker-dealer of facts that may constitute a basis for filing a SAR-BD under this section. If no suspect is identified on the date of such initial detection, a broker-dealer may delay filing a SAR-BD for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In situations involving violations that require immediate attention, such as terrorist financing or ongoing money laundering schemes, the broker-dealer shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SAR-BD. Broker-dealers wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN’s Financial Institutions Hotline at 1-866-556-3974 in addition to filing timely a SAR-BD if required by this section. The broker-dealer may also, but is not required to, contact the Securities and Exchange Commission to report in such situations.

(c) Exceptions. (1) A broker-dealer is not required to file a SAR-BD to report:

(i) A robbery or burglary committed or attempted of the broker-dealer that is reported to appropriate law enforcement authorities, or for lost, missing, counterfeit, or

stolen securities with respect to which the broker-dealer files a report pursuant to the reporting requirements of 17 CFR 240.17f-1;

(ii) A violation otherwise required to be reported under this section of any of the federal securities laws or rules of an SRO by the broker-dealer or any of its officers, directors, employees, or other registered representatives, other than a violation of 17 CFR 240.17a-8 or 17 CFR 405.4, so long as such violation is appropriately reported to the SEC or an SRO.

(2) A broker-dealer may be required to demonstrate that it has relied on an exception in paragraph (c)(1) of this section, and must maintain records of its determinations to do so for the period specified in paragraph (d) of this section. To the extent that a Form RE-3, Form U-4, or Form U-5 concerning the transaction is filed consistent with the SRO rules, a copy of that form will be a sufficient record for purposes of this paragraph (c)(2).

(3) For the purposes of this paragraph (c) the term “federal securities laws” means the “securities laws,” as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47), and the rules and regulations promulgated by the Securities and Exchange Commission under such laws.

(d) Retention of records. A broker-dealer shall maintain a copy of any SAR-BD filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR-BD. Supporting documentation shall be identified as such and maintained by the broker-dealer, and shall be deemed to have

been filed with the SAR-BD. A broker-dealer shall make all supporting documentation available to FinCEN, any other appropriate law enforcement agencies or federal or state securities regulators, and for purposes of paragraph (g) of this section, to an SRO registered with the Securities and Exchange Commission, upon request.

(e) Confidentiality of reports. No financial institution, and no director, officer, employee, or agent of any financial institution, who reports a suspicious transaction under this part, may notify any person involved in the transaction that the transaction has been reported, except to the extent permitted by paragraph (a)(3) of this section. Thus, any person subpoenaed or otherwise requested to disclose a SAR-BD or the information contained in a SAR-BD, except where such disclosure is requested by FinCEN, the Securities and Exchange Commission, or another appropriate law enforcement or regulatory agency, or for purposes of paragraph (g) of this section, an SRO registered with the Securities and Exchange Commission, shall decline to produce the SAR-BD or to provide any information that would disclose that a SAR-BD has been prepared or filed, citing this paragraph (e) and 31 U.S.C. 5318(g)(2), and shall notify FinCEN of any such request and its response thereto.

(f) Limitation of liability. A broker-dealer, and any director, officer, employee, or agent of such broker-dealer, that makes a report of any possible violation of law or regulation pursuant to this section or any other authority (or voluntarily) shall not be liable to any person under any law or regulation of the United States (or otherwise to the

extent also provided in 31 U.S.C. 5318(g)(3), including in any arbitration proceeding) for any disclosure contained in, or for failure to disclose the fact of, such report.

(g) Examination and enforcement. Compliance with this section shall be examined by the Department of the Treasury, through FinCEN or its delegees, under the terms of the Bank Secrecy Act. Reports filed under this section shall be made available to an SRO registered with the Securities and Exchange Commission examining a broker-dealer for compliance with the requirements of this section. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the Bank Secrecy Act and of this part.

(h) Effective date. This section applies to transactions occurring after [INSERT DATE 180 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

Dated: \_\_\_\_\_

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James F. Sloan  
Director,  
Financial Crimes Enforcement Network